(5)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR

Writ Petition No. 624 of 1999.

PETITIONERS : 1) M/s. Raymond Limited,
Cement Division,
Mahindra Tower,
'B' Wing,
Worli,
MUMBAI
Through - Shri Siddique Rahatjan,
S/o Siddique Rahman, aged about -
44 Years,
Deputy Manager (Accounts),
Raymond Limited,
Cement Division,
Gopal Nagar,
Tahsil Janjgir,
Distt. Bilaspur.

2) Dipankar Sen,
S/o Shri S. Sen,
Aged about 42 years,
Shareholders of M/s. Raymond Limited,
Resident of House No. 522,
Vinoba Nagar,
Bilaspur,
Distt. Bilaspur.

- versus -

RESPONDENTS 1) Assistant Commissioner of -
Commercial Tax,
Sales Tax Office,
Vikraya Kar Bhawan,
Mungeli Road,
Bilaspur.

2) State of Madhya Pradesh,
Through Secretary,
Ministry of Commercial Taxes,
Vallabh Bhawan,
Bhopal.

3) Commissioner of Sales-tax,
Madhya Pradesh,
M. G. Road,
Indore.

WRIT PETITION UNDER ARTICLES 226/227
OF THE CONSTITUTION OF INDIA

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Oath Commissioner JBP. Smt. Kanta Verma

HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH

CORAM : HON'BLE SHRI H.L. DATTU, C.J. &
HON'BLE SHRI V.K. SHRIVASTAVA, J.

Writ Petition No.624 of 1999

PETITIONERS	M/s Raymond Limited and others
	versus
RESPONDENTS	Assistant Commissioner of Commercial Tax and others

Present: Shri B.P. Sharma, counsel for the petitioners.
Shri Prashant Mishra, Additional Adv. Gen. for the State.

ORAL ORDER

(Passed on 26th February, 2007)

The following oral order of the Court was passed by **H.L. Dattu, C.J. :**

The first petitioner is a company incorporated under the provisions of the Companies Act, 1956. It has its registered office at Ratnagiri in the State of Maharashtra. Its cement manufacturing division is situated at Gopal Nagar, Tahsil Janjgir, Bilaspur District. It carries on the business of manufacturing and sale of cement within and outside the State.

(2) The second petitioner is a shareholder of first petitioner company and is interested in the affairs of the company.

(3) The petitioner company is a dealer registered both under the provisions of Madhya Pradesh Vanijyik Kar Adhiniyam, 1994 and the Central Sales Tax Act.

(4) In this petition filed under Article 226 of the Constitution of India, the petitioners primarily call in question the constitutional validity or otherwise of Section 29 of the Chhattisgarh Commercial Tax Act ("the Act" for short), on the ground that the said provision is unreasonable, arbitrary and has no reasonable nexus with the object of the Act and therefore violative of Article 14 of the Constitution. The other prayer is to quash the notice issued by the Commissioner of Commercial Taxes in exercise of his power under Section 29 of the Act to reopen the concluded assessment for the assessment year 1986-87.

(5) Shri Prashant Mishra, learned Additional Advocate General would contend that the said provision is intra vires of the Act; since the purpose of the provision is to bring to tax, a transaction which has escaped tax liability in the hands of a registered dealer.

(6) In order to appreciate the contention canvassed, the provision which is under challenge requires to be noticed and therefore the same is extracted. The said section reads as under :

> **"Sec. 29 POWER OF REASSESSMENT IN CERTAIN CASES**
>
> (1) Where any order passed in respect of a dealer for any period is rendered erroneous and prejudicial to the interest of revenue consequent to or in the light of any judgment or order of any Court or tribunal, which has become final, then notwithstanding anything contained in this Act the Commissioner may at any time within a period of three years from the date of such judgment or

order initiate proceedings to reassess the tax payable by such dealer.

(2) The reassessment proceedings initiated under sub-section (1) shall be completed as far as may be within a period of two calendar years from the date of initiation of such proceedings.

(3) No order of reassessment under this Section shall be passed without giving to the dealer a reasonable opportunity of being heard."

(7) An analysis of the aforesaid provision would indicate that where any order passed in respect of a dealer under the provision of the Act for any period is rendered erroneous and prejudicial to the interest of revenue, consequent upon any judgment or order of any Court or Tribunal which has become final, then notwithstanding any other provisions in the Act, the Commissioner may within a period of three years from the date of judgment or order initiate proceedings to re-assess the tax payable by such dealer.

(8) Sub-Section (2) of Section 29 of the Act envisages that once the proceedings are initiated under sub-Section (1) of Section 29 of the Act and the same shall be completed by the Commissioner within a period of two years from the date of initiation of such proceedings.

(9) Sub-Section (3) of Section 29 of the Act mandates that no order of re-assessment under sub-section (1) of Section 29 of the Act shall be passed without giving the dealer a reasonable opportunity of being heard.

(10) The object and purpose of Section 29 of the Act appears to be, that, if an order of assessment passed in respect of any dealer is found

to be erroneous and prejudicial in the interest of the revenue by virtue of an order passed by superior forum, such orders can be revised by the Commissioner in the interest of the revenue by invoking his powers under Section 29 of the Act. The pith and substance of this provision appears to be that where the Sales Tax Officer failed to apply the correct state of law which has not been expounded by a superior forum when he completed the original assessment and later on when the correct law is declared by a superior forum which has become final, that would constitute "information" which would give the jurisdiction to the Commissioner to 'reopen' the completed assessment under Section 29 of the Act.

(11) The turn over of a dealer can escape assessment in the original assessment, due to various factors, like mistakes arising on factual aspects and mistakes arising on legal aspects. There can also be cases where mistakes would involve both facts and law. So far as mistakes arising on account of legal aspects, the law now seems to be settled *viz.*, when the correct state of law is brought to the notice of the assessing officer or the assessing officer himself realises the correct state of law which he missed at the time of completion of the original assessment, the assessing officer can proceed to assess or re-assess the dealer. This provision of law is now fortified by the legislature by introducing Section 29 of the Act, authorizing the Commissioner to reopen a completed assessment of a dealer rendered erroneous and prejudicial to the interest of the Revenue in the light of any judgment of a Court or the Tribunal and the main purpose and object of this section appears to be to retrieve the loss of the revenue. Alternatively it can be said that even a wrong order has attained finality and unless that finality is disturbed by a

process known to law or by a person authorised by law, the rights of the assessee and the Revenue will continue to be governed by that order. A decision of the assessing officer for earlier assessment years will continue to be governed by that order though an order is made by a superior forum for the subsequent years which is binding on both the parties, unless that order is rectified so as to make it in conformity with the order passed by a superior forum. It is that power which is exercised by the Commissioner under Section 29 of the Act.

(12) The burden of proving that the provision of the Act is arbitrary, unreasonable and violative of Article 14 of the Constitution rests heavily on the petitioners. That burden is not discharged by the petitioners either in their pleadings or at the time of hearing of the petition.

(13) Section 29(1) of the Act confers re-assessment power on the Commissioner. The section envisages that the Commissioner may at any time within a period of three years initiate proceedings to re-assess the tax payable by a dealer, where any order passed in respect of a dealer for any period is rendered erroneous and prejudicial to the interest of the revenue consequent to any judgment or order of any Court or Tribunal which has become final. In other words, the Commissioner in exercise of his re-assessment power may modify or reverse the order made in favour of the assessee in the light of a subsequent decision, judgment or order passed by any Court or Tribunal in respect of the assessee which has become final. The justification in making a provision of this nature in the statute is not far to seek. The law makers must have realised that in view of the complexity of the provisions of the Act, the authorities under the Act are likely to make mistakes while passing the order of assessment. But all mistakes are not alike, while there would be

mistakes which raise basic questions of law and fact and which require an analysis, there are other mistakes which are patent and not glaring not involving a controversy and hence not requiring a debate or a discussion. The Act provides a separate, self-contained and detailed procedure of appeals or revisions for redressing the grievances of the former category. The law makers possibly may have realised that for simple, glaring and patent mistakes found in the earlier assessment orders have been resolved by a subsequent decision for the subsequent years in the case of same dealer, has provided an easy machinery by which the obvious mistake in the orders passed in earlier assessment years could be corrected.

(14) The impugned provision is just a machinery provision. It does not levy any charge by itself. It is enacted to ensure that there is no evasion of tax. The Act is traceable to Entry 54 in List II of the Seventh Schedule to the Constitution, which provides for "Taxes on sale or purchase of goods other than news papers", subject to provisions of Entry 92-A of List-I. It is well settled that when the legislature has the power to make a law with respect to any subject, it has all the ancillary and incidental powers to make the law effective. The said provision is introduced as stated earlier to bring to tax a turnover which had escaped assessment may be because of the understanding of the provision by the assessing officer in a particular way till it was explained by a superior Court or the Tribunal in the very case of the assessee.

(15) Section 29 of the Act confers power on the Commissioner to re-assess a dealer in whose favour orders have been made or assessments have been completed which are considered to be erroneous and prejudicial to the interest of the revenue. If this is so, we

fail to understand how the said provision is either discriminatory or unreasonable and violative of Article 14 of the Constitution. We have not looked at the provision in any other angle since it is not argued before us.

(16) Insofar as the other prayer is concerned, immediately after receiving the show cause notice, the petitioner is before this Court and because of the pendency of the writ petition the petitioner could not file objection to the show cause notice. In our opinion, if an opportunity is given to the petitioner to file reply to the show cause notice issued by the Commissioner dated 05-12-1998, no prejudice would be caused to the Revenue. In view of the above, the following :

Order

(1) Writ petition is allowed in part.

(2) Writ petition is rejected insofar as the challenge of the petitioners to the constitutional validity of sub-Section (1) of Section 29 of the Chhattisgarh Commercial Tax Act.

(3) Petitioner is permitted to file objection to the show cause notice issued by the Commissioner dated 05-12-1998 within four weeks from today if the Commissioner has not completed the reassessment proceeding.

(4) In the facts and circumstances of the case, parties are directed to bear their own costs.

(5) Ordered accordingly.

Sd/-
Vijay Kumar Shrivastava
Judge

Sd/-
Chief Justice